

JUN 22 1992

[REDACTED]

Employer Identification Number: [REDACTED]  
Form: 1120  
Tax Years: All years

Dear Applicant:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

You are not operated exclusively for exempt purposes as required by section 501(c)(3) of the Code. You are operated for a substantial non-exempt commercial purpose. Furthermore, you are operated to serve private interests more than incidentally.

Contributions to your organization are not deductible under section 170 of the Code.

In arriving at our adverse determination, we considered the additional information presented in your submission of [REDACTED] which informed us of the relationship changes made and new agreements entered into between yourself and the for-profit owner-developer and other related entities. These changes and agreements reflect that the modifications suggested at the conference accorded you earlier have not been accepted. As now operated, you still do not possess sufficient control over the project to be considered anything other than a facilitator for the for-profit developer in the sale of housing units to retired [REDACTED].

The proposed life care facility will no longer be exclusively for retired [REDACTED] but will be open to the general public. Under the new arrangement the [REDACTED] will not donate the land and its contractual rights related thereto to you as suggested by the Service which would have given you a degree of control over the

[REDACTED]

day to day operations of the project. The joint governing board between you and the developer of the project has been replaced by a joint advance coordinating committee and you now will only perform an oversight function. As a result, your approval for the design, implementation and operation of programs is no longer required. Further, because there will be general public occupancy, royalty income will be substantially less than anticipated and your endorsement will be a less effective control device.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter, unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center as indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91st day after the date that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under section 7428.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown above.

Sincerely,

(Signed) [REDACTED]

[REDACTED]  
Director, Exempt Organizations  
Technical Division

cc: [REDACTED]  
Attn: EO Group  
cc: State Officials  
cc: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ladies and Gentlemen:

JUN 21 1989

This is in response to your application for recognition of exemption as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

You were incorporated under the laws of the State of [REDACTED] on [REDACTED]. Your Articles of Incorporation provide that your purpose will be, in part, as follows.

...to provide financial assistance for housing and health care to retired and qualified former [REDACTED] of the United States and their spouses and surviving spouses...to assist in the organization, marketing and operation of life-care villages to provide for the welfare of such persons....

You are the successor of the [REDACTED]. The purpose of that organization was to arrange for the development of a retirement community for its members. You have succeeded to its membership, you currently have [REDACTED] members, and you have continued its activities. You and the original organization did a substantial amount of research to discover the needs of the membership and how those needs could be best met. Bids were solicited from a number of for-profit developers. It was determined that [REDACTED] was the best developer for the project.

[REDACTED] was instrumental in your creation. It has contributed over \$[REDACTED] towards your creation and your expenses. [REDACTED] will be a subsidiary of [REDACTED]. [REDACTED] will develop the village. The village will be managed by [REDACTED].

The apartments to be built will have a number of different floor plans and prices. Entrants will pay an initial entry fee of \$[REDACTED] to over \$[REDACTED], depending on the size and style of the apartment. There will be monthly charges starting at \$[REDACTED] per month for one person living in an efficiency. A portion of the entrance fee will be refunded to the individual's estate upon death or to the individual if the individual moves. A portion of the entrance fee will be used to fund health care benefits.

If all apartments are occupied the initial marketing payment will be \$[REDACTED] with additional payments to be made as a result of turnover. You expect to receive about \$[REDACTED] a year from health care related payments. You anticipate that the average monthly payment in exchange for your endorsement will be over \$[REDACTED].

Section 501(a) provides, in part, that organizations described in section 501(c) are exempt from federal income taxation. Section 501(c)(3) describes, in part, an organization which is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes no part of the net earnings of which inures to the benefit of private shareholders or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt under section 501(c)(3) of the Code it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i)(a)-(b) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and the articles do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. The section cross references the definition of private shareholder which is contained in section 1.501(a)-1(c). That section provides that the words private shareholder or individual in section 501 refers to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as including the relief of the poor and distressed or of the under privileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration.

The presence of a single nonexempt purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes. Better Business Bureau v. United States, 326 U.S. 279 (1945).

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert denied 413 U.S. 910 (1973).

Rev. Rul. 56-304, 1956-2 C.B. 306, holds that an

organization exempt under section 501(c)(3) of the Code may make grants to individuals providing such distributions are made on a true charitable basis in furtherance of the purposes for which the organization was organized. The organization must maintain adequate records and case histories to show the name and address of each recipient of aid, the amount distributed; the purpose for which the aid was given; the manner of selection and any relationship with members, officers or trustees of the organization.

Situation 2 of Rev. Rul. 69-545, 1969-2 C.B. 117, describes a hospital, otherwise serving a charitable purpose, that was denied exemption under section 501(c)(3) of the Code because it served a private interest more than incidentally. The revenue ruling states that in considering whether a nonprofit organization claiming charitable exemption is operated to serve a private benefit the Service will weigh all of the relevant facts and circumstances in each case.

Rev. Rul. 72-124, 1972-1 C.B. 145, which modifies prior revenue rulings in this area, holds that providing for the special needs of the aged has long been recognized as a charitable purpose for Federal tax purposes where the requisite elements of relief of distress and community benefit have been found to be present. The revenue ruling establishes three criteria to be used in determining whether the principal needs of the elderly are being satisfied. These are the need for housing, the need for health care, and the need for financial security.

Leon A. Beechly v. Commissioner, 35 TC 490 (1960), provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

In Plumstead Theater Society, Inc. v. Commissioner, 74 TC 1324 (1980), aff'd 675 F2d 244 (9th Cir. 1982), the court held that the petitioner was organized and operated for charitable and educational purposes and entitled to section 501(c)(3) status when it participated, as sole general partner in a for-profit limited partnership to co-produce a play. In reaching that result, the court found first, that the petitioner was organized and operated exclusively for charitable and educational purposes and second, that the arrangement was for public rather than for private purposes.

In American Campaign Academy v. Commissioner, 92 T.C. 66,

the Tax Court was called on to decide whether benefit to third parties, who were not members of the organization, would prevent the organization from being recognized as an exempt organization within the meaning of section 501(c)(3) of the Code. The Court concluded that the organization could not confer benefits on disinterested persons and still serve public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The Court states as follows.

Moreover, an organization's conferral of benefits on disinterested persons may cause it to serve 'a private interest' within the meaning of section 1.501(c)(3)-1(d)(1)(ii), Income Tax Regs. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978). See Kentucky Bar Foundation v. Commissioner, 78 T.C. 921 (1982), Aid to Artisans, Inc. v. Commissioner 71 T.C. 202 (1978)...In this connection, we use 'disinterested' to distinguish persons who are not private shareholders or individuals having a personal and private interest in the activities of the organization within the meaning of section 1.501(a)-1(c) Income Tax Regs.

Your most significant activity to date has been your involvement in the creation of the retirement community. You and your predecessor organization originated the concept of the development, you selected the site and you selected the developer. You will continue your involvement with the development and the developer. You have entered into an agreement entitled, Royalty Agreement, which will regulate your efforts on behalf of the developer. You have committed yourself to use your best efforts to promote the development. You have agreed to endorse the development and you have agreed to use your best efforts to market the development. You will be substantially compensated for your efforts.

You state that you ultimately wish to provide assistance to persons wishing to live in the development. Your assistance will consist of small grants to assist individuals with the initial payment needed for entrance. For example, you might give \$[REDACTED] to an individual and \$[REDACTED] to a couple towards an entrance of fee of, at a minimum, \$[REDACTED]. You have stated that you will only give assistance towards the lower priced unit, an efficiency. You will provide assistance only if the individual can afford the monthly service fee which is \$[REDACTED] for one person and \$[REDACTED] for two people residing in the efficiency. One of the characteristics you have established for individuals receiving aid will be whether the individual is, or will be, living below

the minimum standards believed adequate or appropriate for retired [REDACTED].

An exempt organization's participation in a joint project with a for-profit entity does not per se result in denial of exemption under section 501(c)(3) of the Code. The facts and circumstances must be examined to determine whether conflicts exist that would be incompatible with being organized and operated exclusively for charitable purposes. Initial focus should be on whether the organization is serving a charitable purpose. Further, if the organization is serving a private interest, other than incidentally, then its participation in the project will effect its exempt status.

If a private interest is served, it must be incidental in both a qualitative and quantitative sense. In order to be incidental in a qualitative sense, it must be a necessary concomitant of the activity which benefits the public at large. In other words, the activity can be accomplished only by benefiting certain private individuals. To be incidental in a quantitative sense, the private benefit must not be substantial after considering the overall public benefit conferred by the activity.

The first issue to be determined is whether you have a charitable purpose. We can not analyze your activities according to the standards established in Rev. Rul. 72-124. That revenue ruling delineated the standards for exemption when an organization is providing housing for the aged. You do not provide housing for the aged. Any housing provided, is provided by [REDACTED], the developer. You have no control over the way the development is built, managed, priced or marketed. Your only recourse if you are dissatisfied with the project is to withdraw your endorsement of the project. This ability does not give you any control over the project, you either agree to everything or the project goes on without you after you have contributed significant time and effort towards its accomplishment. Thus, we can not ascribe the activities of the developer to you.

Your activities must stand on their own. Rev. Rul. 56-304 provides the applicable standard for analysis. It requires that aid to individuals must be given on a truly charitable basis. The only arguably charitable activity you have indicated you will engage in is helping individuals and couples pay their entrance fee or their monthly charges. The minimum entrance fee for a very small apartment that does not have a separate bedroom, is \$[REDACTED]. You will provide \$[REDACTED] or \$[REDACTED] towards the



entrance fee. Thus the entrant will have to pay at least \$[REDACTED], and a monthly fee of over \$[REDACTED]. We do not find that an individual with the resources to pay the remaining entry fee and the monthly fee would be a member of a charitable class. This is not surprising, because the standard you have established for assistance is not relief of poverty, but maintenance of [REDACTED]'s standard of living.

Even if we could find that this activity was charitable, the benefit to private individuals that you are engaged in is so substantial that it would outweigh any public benefit. You have been instrumental in the establishment of the development. Your prior and continued assistance to the developer is of significant magnitude. It is clear that the developer finds your efforts to be of substantial benefit. [REDACTED] has loaned over \$[REDACTED] to you without requiring the execution of a loan agreement. This money has been used to create you and to fund your operations. The development that you have fostered and will endorse and market, is not designed to serve a charitable class of individuals. From the information you have provided we have determined that the A unit, the efficiency, comprises 2.6% percent of the units. The luxury G unit, on the other hand, which has an entrance fee over \$[REDACTED] comprises at least 23.5% of the units.

It can be easily seen that your efforts have not gone towards a charitable end, rather they have gone towards the development of a community for individuals with substantial means. Your efforts at marketing and endorsement do not inure to benefit of a charitable class but are of clear and significant benefit to [REDACTED]. By your involvement, [REDACTED] acquires a captive market, your members, and your services as sales agent to your members. Your endorsement is clearly of great value to the developer.

Therefore, we find that you are not operated for charitable purposes within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations. Further, you are not organized for public purposes within the meaning of section 1.501(c)(3)-1(d)(1)(ii) because you are organized to promote the private benefit of a for-profit corporation. Therefore, you are not exempt under section 501(a) of the Code because you are not an organization described in section 501(c)(3).

You are required to file federal income tax returns on Form 1120. Contributions made to you by individuals are not deductible for tax purposes under section 170 of the Code.

[REDACTED]

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by some one who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it with in the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Atlanta, GA. Thereafter, any questions about your federal income tax status should be addressed to that office.

Additional letters with respect to this case should be sent to [REDACTED], Internal Revenue Service, 1111 Constitution Avenue, N. W., Washington, D.C. 20224.

Sincerely yours,

(signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch 2

CC: [REDACTED]

Attn: Ed Drape

CC: [REDACTED]

[REDACTED]

6/19/89

6/21/89